

Ombudsman suggests that the Commission clarify its rules on openness

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The European Ombudsman, **P. Nikiforos Diamandouros**, has invited the European Commission to consider clarifying its rules on access to documents. This follows a complaint from an Irish citizen whose request for access to documents was refused. While the Ombudsman found that this refusal was justified, his investigation revealed a problem with the Commission's rules implementing Regulation 1049/2001 on public access to documents (1). According to the Ombudsman:

"the procedural rules adopted by the Commission are not drafted with the precision necessary to reflect the substantive provisions laid down in the Regulation".

The complaint

An Irish citizen asked the Commission for access to certain documents. The documents were supplied, with the exception of two letters sent by Ireland to the Commission (2). The complainant alleged that the Commission was wrong to refuse access to these documents since their disclosure would not have compromised any of the interests set out in Regulation 1049/2001.

The Commission argued that it was unable to release the relevant documents, as the Irish authorities had requested it not to do so. The Commission said it was obliged to consult the Irish authorities, given that the relevant documents had been submitted before Regulation 1049/2001 became applicable. It confirmed that it consults Member States systematically where access to such documents is requested.

The Ombudsman found that this was in line with Court rulings in this area. He went on to say, however, that, according to its implementing rules, the Commission has to examine the possibility of disclosing a document *before* consulting the third-party author. Only where the Commission is unable to refuse or to grant access itself is there an obligation to consult the third party.

Given the contradiction between the rules and the appropriate procedure, the Ombudsman concluded that the Commission might consider clarifying its rules. He added that the Council's rules in this area could serve as a useful guidance. To read the full decision, please visit:

<http://www.ombudsman.europa.eu/decision/en/021753.htm> [Link]



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(1) OJ 2001 no. L 145, page 43.

(2) Under Article 27 (1) of the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.